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11 Countrywide Financial Corp., Countrywide
Securities Corp., Countrywide Capital Markets, LLC,
12 Countrywide Home Loans, Inc., Countrywide Home
Loans Servicing LP, CWMBS, Inc., CWALT, Inc.,
13 CWABS, Inc., and CWHEQ, Inc.

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 **WESTERN DIVISION**

17 IN re COUNTRYWIDE FINANCIAL
18 CORP. MORTGAGE-BACKED
SECURITIES LITIGATION CASES

19 Case No. 11-ML-02265-MRP (MANx)
20 **COUNTRYWIDE DEFENDANTS'**
NOTICE OF REQUEST AND
REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
THE AMENDED MOTION TO
STRIKE AND TO DISMISS

21 Date: January 26, 2012
22 Time: 1:00 p.m.
Courtroom: 12
Judge: Hon. Mariana R. Pfaelzer

23 **THRIVENT FINANCIAL FOR**
24 **LUTHERANS, et al.,**

25 *Plaintiffs,*

26 v.
27 **COUNTRYWIDE FINANCIAL**
CORPORATION, et al.,

28 *Defendants.*

Case No. 11-07154-MRP-MAN

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that Defendants Countrywide Financial
3 Corporation, Countrywide Securities Corporation, Countrywide Capital Markets,
4 Countrywide Home Loans, Inc., Countrywide Home Loans Servicing, LP,
5 CWMBS, Inc., CWALT, Inc., CWABS, Inc., and CWHEQ, Inc. (collectively, the
6 “Countrywide Defendants”), by and through their attorneys of record, hereby
7 request that the Court take judicial notice, pursuant to Federal Rule of Evidence 201
8 and supporting case law, of the documents and facts listed below in connection with
9 their Supplemental Memorandum in Support of the Countrywide Defendants’
10 Amended Motion to Strike and to Dismiss (“Supplemental Memorandum”).

11

12	<u>EXHIBIT</u>	<u>DESCRIPTION</u>
13	1	Excerpt from Transcript of Hearing, <i>In re Countrywide Fin. Corp. Sec. Litig.</i> , No. CV 07-05295 MRP (MANx) (C.D. Cal. Feb. 25, 2011)
14	2	Press Release, Thrivent Financial for Lutherans, Thrivent Financial Highlights Strength and Community Outreach at Report to the Community (June 2, 2009)
15	3	Excerpt from Thrivent Financial 2008 Statutory Annual Statement
16	4	Randy Myers, <i>One Year Later</i> , THRIVENT MAGAZINE (Fall 2009)
17	5	Order re: Defendants’ Motions to Dismiss, <i>Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin. Corp.</i> , No. 10-CV-05699, slip. op. (C.D. Cal. Jan. 20, 2011)
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23 This request is based on the attached Memorandum of Points and Authorities
24 in support thereof, the papers, records, and pleadings on file herein and upon any
25 additional argument or evidence permitted at the hearing on the Countrywide
26 Defendants’ motion to dismiss.

1 Dated: November 4, 2011

GOODWIN PROCTER LLP

2 /s/ Brian E. Pastuszenski

3 Brian E. Pastuszenski (*pro hac vice*)
Lloyd Winawer (State Bar No. 157823)
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5 *Counsel for the Countrywide Defendants*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Federal Rule of Evidence 201 provides that a court may take judicial notice of
3 a fact “not subject to reasonable dispute in that it is either (1) generally known
4 within the territorial jurisdiction of the trial court or (2) capable of accurate and
5 ready determination by resort to sources whose accuracy cannot reasonably be
6 questioned.” FED. R. EVID. 201(b). As set forth below, the documents submitted in
7 support of the Countrywide Defendants’ Supplemental Memorandum are properly
8 subject to judicial notice.

9 Exhibit 1 is an excerpt from the transcript of the hearing that was held by this
10 Court in *In re Countrywide Fin. Corp. Sec. Litig.*, No. 07-CV-05295-MRP, on
11 February 25, 2011. This Court may take judicial notice of the proceedings and
12 pleadings filed in related actions, as well as orders and decisions made by it and
13 other courts. *See San Francisco Baykeeper v. West Bay Sanitary Dist.*, 2011 WL
14 1990637, at *6 (N.D. Cal. May 23, 2011) (court takes judicial notice of hearing
15 transcript from case); *Kuan v. United States Customs Serv.*, 2009 U.S. Dist. LEXIS
16 126574, at *4 n.3 (C.D. Cal. Dec. 16, 2009) (“The Court may take judicial notice of
17 matters of public record, including court records in a related proceeding.”); *In re
18 Edward Jones Holders Litig.*, 453 F. Supp. 2d 1210, 1217 n.8 (C.D. Cal. 2006)
19 (taking judicial notice of related proceedings). For this same reason, the Court may
20 take judicial notice of Exhibit 5, which is a copy of this Court’s Order re:
21 Defendants’ Motions to Dismiss in *Centaur Classic Convertible Arbitrage Fund
22 Ltd. v. Countrywide Fin. Corp.*, No. 10-CV-05699, slip. op. (C.D. Cal. Jan. 20,
23 2011). *See Papai v. Harbor Tug & Barge Co.*, 67 F.3d 203, 207 n.5 (9th Cir. 1995),
24 *rev’d on other grounds*, 520 U.S. 548 (1997) (“[j]udicial notice is properly taken of
25 orders and decisions made by other courts or administrative agencies”)

26 Exhibit 2 is a press release. Courts will regularly take judicial notice of
27 company press releases and other publicly available documents on motions to
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1 dismiss. *See, e.g., In re Washington Mut., Inc. Sec., Deriv. & ERISA Litig.*, 259
2 F.R.D. 490, 495 (W.D. Wash. 2009) (taking judicial notice of SEC filings,
3 conference call transcripts, and Washington Mutual's press releases); *In re Wet Seal,*
4 *Inc. Sec. Litig.*, 518 F. Supp. 2d 1148, 1157-60 (C.D. Cal. 2007) (taking judicial
5 notice of various transcripts, press releases, SEC filings, Canadian securities filings,
6 and newspaper articles, because they were either referenced and relied on in the
7 complaint, or, as public records, were of "undisputed authenticity").

8 Similarly, Exhibit 3 is an excerpt¹ from a recent Annual Statement issued by
9 Thrivent Financial for Lutherans, a publicly available document that was filed with
10 a state government agency. Accordingly, this document is a matter of public record,
11 analogous to SEC filings, and this Court may properly take judicial notice of its
12 contents. Cf. *In re Copper Mountain Sec. Litig.*, 311 F. Supp. 2d 857, 863-64 (N.D.
13 Cal. 2004) (taking judicial notice of information that was publicly available at the
14 time the defendant company made the allegedly false statements, including press
15 releases and transcripts of conference calls). The Court may take judicial notice of
16 information that is publicly available and "capable of accurate and ready
17 determination by resort to a source whose accuracy cannot be reasonably
18 questioned." *In re Hansen Natural Corp. Sec. Litig.*, 527 F. Supp. 2d 1142, 1150
19 n.2 (C.D. Cal. 2007) (citation omitted); see also Fed. R. Evid. 201.

20 Exhibit 4 is an article from a publication that is published on a regular basis
21 by one of the Plaintiffs. Judicial notice of this article is appropriate because it is
22 publicly available and its contents are not subject to reasonable dispute. *See Von*
23 *Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir.
24 2010) (holding that judicial notice may be taken of newspaper articles at the motion
25 to dismiss stage in order to "indicate what was in the public realm at the time, not

26 ¹ In the interests of efficiency, the Countrywide Defendants have submitted and
27 excerpt from the relevant Annual Statement. Of course, the Countrywide
Defendants will submit the document in its entirety at the Court's request.
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1 whether the contents of those articles were in fact true") (internal citation omitted);
2 *In re Rackable Sys., Inc. Sec. Litig.*, 2010 WL 3447857, at *3 (N.D. Cal. Aug. 27,
3 2010) (taking judicial notice of newspaper articles).

4 **CONCLUSION**

5 For all of the above reasons, the Countrywide Defendants respectfully request
6 that the Court take judicial notice of Exhibits 1-5 filed in support of its
7 Supplemental Memorandum.

8 Dated: November 4, 2011

9 **GOODWIN PROCTER LLP**

10 /s/ Brian E. Pastuszenski
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12 *Counsel for the Countrywide Defendants*

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1 **PROOF OF SERVICE**

2 I, Gareth Oania, declare:

3 I am employed in County of Los Angeles, State of California. I am over the
4 age of 18 and not a party to the within action. My business address is 601 S.
5 Figueroa St., 41st Floor, Los Angeles, CA 90017.

6
7 On November 4, 2011, I served the following document by placing a true
8 copy thereof in a sealed envelope(s) on the persons listed on the service list:

9 **COUNTRYWIDE DEFENDANTS' NOTICE OF REQUEST AND REQUEST
10 FOR JUDICIAL NOTICE IN SUPPORT OF SUPPLEMENTAL
11 MEMORANDUM IN SUPPORT OF THE AMENDED MOTION TO STRIKE
12 AND TO DISMISS**

- 13 (MAIL) I placed the envelope for collection and mailing, following our
14 ordinary business practices. I am readily familiar with this firm's practice
15 for collecting and processing correspondence for mailing. On the same day
16 that correspondence is placed for collection and mailing, it is deposited in
17 the ordinary course of business with the United States Postal Service, in a
18 sealed envelope with postage fully prepaid. I am a resident or employed in
19 the county where the mailing occurred. The envelope or package was
20 placed in the mail at Los Angeles, California.
- 21 (OVERNIGHT DELIVERY) I deposited in a box or other facility regularly
22 maintained by Federal Express , an express service carrier, or delivered to a
23 courier or driver authorized by said express service carrier to receive
24 documents, a true copy of the foregoing document in sealed envelopes or
25 packages designated by the express service carrier, addressed as stated
26 above, with fees for overnight delivery paid or provided for.
- 27 (MESSENGER SERVICE) I served the documents by placing them in an
28 envelope or package addressed to the persons at the addresses listed and
 provided them to a professional messenger service for service. A separate
 Personal Proof of Service provided by the professional messenger service
 will be filed under separate cover.
- 29 (FACSIMILE) Based on an agreement of the parties to accept service by
30 fax transmission, I faxed the documents to the persons at the fax numbers
31 listed. No error was reported by the fax machine that I used. A copy of the
32 record of the fax transmission, which I printed out, is attached.
- 33 (E-MAIL or ELECTRONIC TRANSMISSION) Based on a court order or
34 an agreement of the parties to accept service by e-mail or electronic
35 transmission, I caused the documents to be sent to the persons at the e-mail
36 addresses listed. I did not receive, within a reasonable time after the
37 transmission, any electronic message or other indication that the
38 transmission was unsuccessful.

(CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(d)(1). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P.5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction this service was made and that the foregoing is true and correct.

Executed on November 4, 2011, at Los Angeles, California.

Gareth Oania
(Type or print name)


(Signature)

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